IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5831 of 1998
With
SCA Nos. 5833/98, 5834/98, 5835/98, 5837/98,
5839/98.

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

STATE OF GUJARAT

Versus

BAVA BHIKHA

Appearance:

MR V B GHARANIYA, AGP for Petitioners
MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT
Date of decision: 11/08/98

COMMON ORAL JUDGEMENT

Rule. Mr. T.R. Mishra, waives service of rule on behalf of the respondent.

2. These six petitions are filed by the State of Gujarat to challenge the common award passed in Reference No.961/89 and 1147/89 to 1152/89 by the Labour Court of Rajkot on 31.12.96.

3. The respondents were working as a daily wager with the present petitioner no.2 on daily wages at Rs.19.40/-. It was their claim that they were working nearly seven years prior to their termination on 16.2.1989 without following the due procedure laid down in section 25 F. Hence, they raised the industrial dispute which resulted into references in question.

4. The Labour Court on considering the oral and documentary evidence produced before him, came to the conclusion that each of these six workmen had worked for more than 240 days in a year, and they were continuing in service for more than one year. He, therefore, found that their services were retrenched without following the due procedure under section 25 F of the Industrial Disputes Act. He also took into consideration that the workmen were working as daily wagers and they were labourers and they must have worked during the intervening period. He, therefore, directed the respondents to reinstate them with 25% of backwages. The said award is challenged by filing this petition.

5. The findings recorded by the Labour Court that each of the workmen must have completed 240 days in 12 months prior to their termination is a finding recorded on appreciation evidence before him. It is not possible to hold that the said finding recorded by the Labour Court is either perverse or grossly errorneous resulting into miscarriage of justice so as to interfere with the same by exercising under Article 226 and 227 of the Constitution of India. Consequently, I am unable to accept the contention of Learned AGP that the said finding should be interfered with by this court.

6. Admittedly, the Labour Court has found that the workmen must have worked during the intervening period and therefore they are not entitled to get full back wages. No doubt the Labour Court has awarded them 25% backwages. It must be mentioned here that the employer in this case is not a Private Industrialists but it is a State Government. No doubt it is always expected that the State Government should be an ideal employer but it must be borne in mind that many time action of the State Government are the results of the decisions of some bureaucrats. The payment of the Government money is the payment of the public money. Therefore taking into consideration this aspect and the findings of the Labour Court that the workmen must have been worked during the intervening period, I hold that the term of the award for granting backwages at 25% from the date of termination should be interfered by this court. The workmen are already reinstated by the petitioner as ordered by this court, when the matter came up first time for admission before this court. Therefore the compliance of that part of the award has taken place. I would, therefore, direct the petitioner to give 25% back wages to each of the respondents from 1st December 1996, till the date of reinstatement. Each of the respondents would also be entitled to the continuity of service and all other service benefits from the date of termination till the date of reinstatement.

7. Thus, I hold that the present petitions will have to be partly allowed as indicated above. The petitioner is directed to pay 25% backwages to each of the respondents from 1st December, 1996 till the date of reinstatement within three months from today. Rule is made absolute as indicated above. The parties are directed to bear their respective costs.

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